

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

**DIANNA MARIE BARAY**  
**a.k.a. DIANNA MARIE PEREZ**

Registered Nurse License Applicant

Respondent

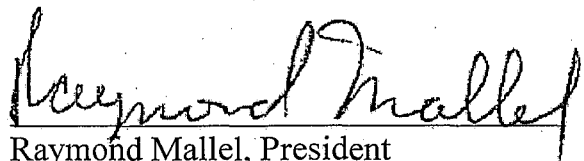
Case No. 2013-51

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on May 17, 2013.

IT IS SO ORDERED April 19, 2013.

A handwritten signature in black ink, appearing to read "Raymond Mallel", written over a horizontal line.

Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*  
7

8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
Against:

Case No. 2013-51

12 **DIANNA MARIE BARAY AKA DIANNA**  
13 **MARIE PEREZ**  
14 **9361 Bocina Lane, Apt. B**  
**Atascadero, CA 93422**  
15 **Applicant for Registered Nurse License**  
16 **Respondent.**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of  
21 Registered Nursing (Board). She brought this action solely in her official capacity and is  
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
23 Christina Thomas, Deputy Attorney General.

24 2. Respondent Dianna Marie Baray aka Dianna Marie Perez (Respondent) is  
25 representing herself in this proceeding and has chosen not to exercise her right to be represented  
26 by counsel.  
27  
28

3. On or about January 10, 2011, the Board of Registered Nursing received an undated application for a Registered Nurse License by Endorsement from Dianna Marie Baray aka Dianna Marie Perez with a cover letter dated January 6, 2011. Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on May 26, 2011.

## JURISDICTION

4. Statement of Issues No. 2013-51 was filed before the Board of Registered Nursing, Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on July 17, 2012.

5. A copy of Statement of Issues No. 2013-51 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 2013-51. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2013-51.

10. Respondent agrees that her Applicant for Registered Nurse License is subject to denial and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED: The application of Respondent Dianna Marie Baray aka Dianna Marie Perez for licensure is hereby granted and a license shall be issued to Respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of three (3) years on the following conditions:

**Severability Clause.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this

1 probation time period. Respondent's probation is tolled, if and when she resides outside of  
2 California. Respondent must provide written notice to the Board within 15 days of any change of  
3 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
4 returning to practice in this state.

5 Respondent shall provide a list of all states and territories where she has ever been licensed  
6 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide  
7 information regarding the status of each license and any changes in such license status during the  
8 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing  
9 license during the term of probation.

10 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit  
11 or cause to be submitted such written reports/declarations and verification of actions under  
12 penalty of perjury, as required by the Board. These reports/declarations shall contain statements  
13 relative to Respondent's compliance with all the conditions of the Board's Probation Program.  
14 Respondent shall immediately execute all release of information forms as may be required by the  
15 Board or its representatives.

16 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every  
17 state and territory in which she has a registered nurse license.

18 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall  
19 engage in the practice of registered nursing in California for a minimum of 24 hours per week for  
20 6 consecutive months or as determined by the Board.

21 For purposes of compliance with the section, "engage in the practice of registered nursing"  
22 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
23 non-direct patient care position that requires licensure as a registered nurse.

24 The Board may require that advanced practice nurses engage in advanced practice nursing  
25 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

26 If Respondent has not complied with this condition during the probationary term, and  
27 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
28 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an

extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. **Employment Approval and Reporting Requirements.** Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this Decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. **Supervision.** Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

1 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
2 person communication with Respondent at least twice during each shift worked.

3 (d) Home Health Care - If Respondent is approved to work in the home health care  
4 setting, the individual providing supervision and/or collaboration shall have person-to-person  
5 communication with Respondent as required by the Board each work day. Respondent shall  
6 maintain telephone or other telecommunication contact with the individual providing supervision  
7 and/or collaboration as required by the Board during each work day. The individual providing  
8 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
9 patients' homes visited by Respondent with or without Respondent present.

10 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any  
11 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,  
12 or for an in-house nursing pool.

13 Respondent shall not work for a licensed home health agency as a visiting nurse unless the  
14 registered nursing supervision and other protections for home visits have been approved by the  
15 Board. Respondent shall not work in any other registered nursing occupation where home visits  
16 are required.

17 Respondent shall not work in any health care setting as a supervisor of registered nurses.  
18 The Board may additionally restrict Respondent from supervising licensed vocational nurses  
19 and/or unlicensed assistive personnel on a case-by-case basis.

20 Respondent shall not work as a faculty member in an approved school of nursing or as an  
21 instructor in a Board approved continuing education program.

22 Respondent shall work only on a regularly assigned, identified and predetermined  
23 worksite(s) and shall not work in a float capacity.

24 If Respondent is working or intends to work in excess of 40 hours per week, the Board may  
25 request documentation to determine whether there should be restrictions on the hours of work.

26 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and  
27 successfully complete a course(s) relevant to the practice of registered nursing no later than six  
28 months prior to the end of her probationary term. Respondent shall obtain prior approval from



1 the Board before enrolling in the course(s). Respondent shall submit to the Board the original  
2 transcripts or certificates of completion for the above required course(s). The Board shall return  
3 the original documents to Respondent after photocopying them for its records.

4 **11. Violation of Probation.** If Respondent violates the conditions of her probation, the  
5 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order  
6 and impose the stayed discipline (revocation/suspension) of Respondent's license.

7 If during the period of probation, an accusation or petition to revoke probation has been  
8 filed against Respondent's license or the Attorney General's Office has been requested to prepare  
9 an accusation or petition to revoke probation against Respondent's license, the probationary  
10 period shall automatically be extended and shall not expire until the accusation or petition has  
11 been acted upon by the Board.

12 **12. License Surrender.** During Respondent's term of probation, if she ceases practicing  
13 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,  
14 Respondent may surrender her license to the Board. The Board reserves the right to evaluate  
15 Respondent's request and to exercise its discretion whether to grant the request, or to take any  
16 other action deemed appropriate and reasonable under the circumstances, without further hearing.  
17 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be  
18 subject to the conditions of probation. Surrender of Respondent's license shall be considered a  
19 disciplinary action and shall become a part of Respondent's license history with the Board. A  
20 registered nurse whose license has been surrendered may petition the Board for reinstatement no  
21 sooner than the following minimum periods from the effective date of the disciplinary decision:

22 (1) Two years for reinstatement of a license that was surrendered for any reason other  
23 than a mental or physical illness; or,

24 (2) One year for a license surrendered for a mental or physical illness.  
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Applicant for Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

9/17/12

  
DIANNA MARIE BARAY  
Respondent

ENDORSEMENT

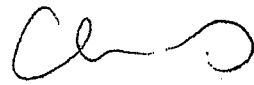
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated:

10/11/12

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
MARC D. GREENBAUM  
Supervising Deputy Attorney General

  
CHRISTINA THOMAS  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Statement of Issues No. 2013-51**

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC GREENBAUM  
Supervising Deputy Attorney General  
3 CHRISTINA THOMAS  
Deputy Attorney General  
4 State Bar No. 171168  
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5 Los Angeles, CA 90013  
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. **2013-51**

13 **DIANNA MARIE BARAY,**

**STATEMENT OF ISSUES**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
19 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs (Board).

21 2. On or about January 10, 2011, the Board of Registered Nursing received an undated  
22 application for a Registered Nurse License by Endorsement from Dianna Marie Baray  
23 (Respondent) with a cover letter dated January 6, 2011. Respondent certified under penalty of  
24 perjury to the truthfulness of all statements, answers, and representations in the application. The  
25 Board denied the application on May 26, 2011.

26 ///

27 ///

28 ///

## JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

....

"(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

....

"(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a

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1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
4 discipline a licensee for conviction of a crime that is independent of the authority granted under  
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
11 made suspending the imposition of sentence, irrespective of a subsequent order under the  
12 provisions of Section 1203.4 of the Penal Code."

13 6. Section 2736 provides, in pertinent part, that the Board may deny a license when it  
14 finds that the applicant has committed any acts constituting grounds for denial of licensure under  
15 section 480.

16 7. Section 2761 states, in pertinent part:

17 "The board may take disciplinary action against a certified or licensed nurse or deny an  
18 application for a certificate or license for any of the following:

19 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

20 ....

21 "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
22 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
23 conclusive evidence thereof."

#### 24 **REGULATORY PROVISIONS**

25 8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

26 "A conviction or act shall be considered to be substantially related to the qualifications,  
27 functions or duties of a registered nurse if to a substantial degree it evidences the present or

28 ///

1 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
2 safety, or welfare."

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(Conviction of a Crime)**

5 9. Respondent's application is subject to denial under section 2761, subdivision (f) and  
6 480, subdivision (a)(1), in that Respondent was convicted of a crime, as follows:

7 a. On or about March 5, 1999, after pleading guilty, Respondent was convicted of one  
8 misdemeanor count of violating Kansas Statute section 40-3104 [driving without insurance] in the  
9 criminal proceeding entitled *City of Liberal, Kansas v. Danna Baray* (Mun. Ct. Seward County,  
10 1999, No. 1999TRT494). The circumstances surrounding the conviction are that on or about  
11 February 19, 1999, Respondent drove a vehicle without having insurance.

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 **(Knowingly Made a False Statement of Fact)**

14 10. Respondent application is subject to denial under section 480, subdivision (c), in that  
15 Respondent knowingly made a false statement of fact, by failing to disclose her March 5, 1999  
16 conviction case against her, on her application for licensure. In addition, Respondent signed  
17 under penalty of perjury, under the laws of the State of California that the forgoing was true and  
18 correct, on her application for licensure. Complainant refers to, and by this reference  
19 incorporates, the allegations set forth in paragraph 9, as though set forth fully.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Acts Warranting Denial of Licensure)**

22 11. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)  
23 and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business and  
24 profession in question, would be grounds for suspension or revocation of her license as follows:

25 a. Respondent was convicted of a crime substantially related to the qualifications,  
26 functions, or duties of a registered nurse which to a substantial degree evidence her present or  
27 potential unfitness to perform the functions authorized by her license in a manner consistent with  
28 the public health, safety, or welfare, in violation of sections 2761, subdivision (f) and 490, in

1 conjunction with California Code of Regulations, title 16, section 1444. Complainant refers to,  
2 and by this reference incorporates, the allegations set forth above in paragraph 9, as though set  
3 forth fully.

4 b. On or about November 8, 2010, a criminal case was filed against Respondent,  
5 charging her with one misdemeanor count of violating Kansas Statute section 21-4101 [disorderly  
6 conduct] in the criminal proceeding entitled *City of Liberal, Kansas v. Dianna Baray* (Mun. Ct.  
7 Seward County, 2010, No. 2010-3329). On or about December 16, 2010, the Court placed  
8 Respondent on diversion for one year, with terms and conditions. The circumstances surrounding  
9 the charges are that on or about November 5, 2010, Respondent caused intentional body harm to  
10 another and was subsequently arrested for violating Kansas Statute section 21-3412a [domestic  
11 battery].

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
14 and that following the hearing, the Board of Registered Nursing issue a decision:

- 15 1. Denying the application of Dianna Marie Baray for a Registered Nurse License by  
16 Endorsement; and,  
17 2. Taking such other and further action as deemed necessary and proper.

18 DATED: July 17, 2012

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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